REMARKS

The foregoing amendments and the following remarks are responsive to the December 5, 2003 Final Office Action. Claims 1-3, 6, 10-16, 18-20, and 22-23 are amended, Claim 24 is cancelled without prejudice, and new Claim 25 is added. Thus, Claims 1-23 and 25 are presented for further consideration.

Request for Entry

Applicant submits that the amendments discussed herein place the present application in better form for appeal by more clearly reciting the claimed invention and do not introduce new issues. Please enter the amendments and reconsider the claims in view of the following remarks.

Response to Rejection of Claims 1, 2, 5-8, 14, 21, and 22 Under 35 U.S.C. § 103(a)

In the December 5, 2003 Final Office Action, the Examiner rejects Claims 1, 2, 5-8, 14, 21, and 22 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,268,849 to Boyer et al. ("Boyer").

Claim 1

Applicant respectfully submits that the Examiner is misinterpreting the claim language of Claim 1. As discussed herein, Claim 1 has been amended to more clearly recite what Applicant considers to be the claimed invention.

As amended, Claim 1 recites a method of selecting user-preferred programs from a plurality of programs, the method comprising (emphasis added):

> accessing a first database that includes program information describing the plurality of programs through program attributes;
> obtaining user-defined criteria for identifying preferred program attributes and non-preferred program attributes; and
> sorting through the first database using the user-defined criteria to select programs, the program attributes of each selected program having the preferred program attributes and not having the non-preferred program attributes.

Applicant respectfully submits that the Examiner is interpreting the word "and" in Claim 1 in its conjunctive sense such that Claim 1 refers to selected programs which include programs having the preferred program attributes and programs not having non-preferred program attributes. As made more clear by the amendments discussed herein, the word "and" is properly interpreted in its combinatorial sense such that amended Claim 1 refers to selected programs which include programs wherein each program has the preferred program attributes and does not

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have the non-preferred program attributes. If a particular program has one or more non-preferred program attributes, the particular program is <u>not</u> selected.

As amended, Claim 1 is directed to selecting a program by sorting through a database of program information, looking for programs (i) that <u>have "must-have" program attributes</u> (called "preferred program attributes") and (ii) that <u>do not have "must-not-have" program attributes</u> (called "non-preferred attributes"). Both sets of program attributes (the "must-have" attributes and the "must-not-have" attributes) are obtained from the user-defined criteria. Only programs which have the "must-have" attributes and that do not have the "must-not-have" attributes will be selected. This definition of the "preferred program attributes" and the "non-preferred program attributes" is provided by the present specification. By providing these definitions in the present specification, Applicant is serving as his own lexicographer, in accordance with MPEP §2111.01, February 2003, page 2100-48.

The present specification describes an exemplary embodiment of the method at page 5, lines 6-19 in connection with Figures 4 and 5 for certain preferred embodiments (emphasis added):

> In a step 104, the method obtains user-defined criteria that identify preferred program attributes and non-preferred program attributes of a user. For example, the <u>user-defined criteria identify the user's preferred genre (e.g., Action, Adventure) and the user's non-preferred genre (e.g., Musical, Cartoons)</u>. The user-defined criteria may further identify <u>the user's preferred actors</u> within the preferred genre, as well as <u>the user's non-preferred actors</u> within the preferred genre. ...
>
> In a step 106, the method sorts through the first database to determine a program having program attributes that <u>include the preferred program attributes and that exclude the non-preferred program attributes</u>. The method uses logical AND and logical NOT operations to sort through the first database, which permit the method to <u>include programs that match the user's preferences as defined through the preferred program attributes and to exclude programs that do not match user's preferences as defined through the non-preferred program attributes</u>.

In this way, the present specification describes using <u>two separately defined sets of program attributes</u> (the "preferred" and the "non-preferred" program attributes) to express the user's preferences and to filter the program information database to determine a program of interest to the user. In the example cited above, the non-preferred program attributes in the genre category (Musicals, Cartoons) are separately defined from the preferred program attributes (Action,

Adventure), and are not merely the logically-converse attributes (e.g., Not Action, Not Adventure) which are mutually exclusive from the preferred program attributes.

This use of the terms "preferred" and "non-preferred" is also clearly disclosed by the present specification at page 8, lines 5-18. This portion of the present specification describes an exemplary embodiment utilizing an advanced recommendation engine ("ARE") to sort the program information (emphasis added):

> For example, the user may modify or override the general user profile and define the following profile:
> GENRE: Action, Adventure
> <u>Preferred Actor(s): Clint Eastwood</u>
> <u>Non-Preferred Actor(s): Sandra Locke</u>
> Era: 1970-1980
> The ARE interprets this user profile as "<u>show me all action or adventure movies with Clint Eastwood but not with Sandra Locke</u> that were released between 1970 and 1980." Upon activation of the ARE, the ARE determines all action or adventure movies that satisfy these criteria. <u>The ARE permits a user to define complex statements defining the user's preferences. A particular advantage is that the user may include and exclude certain criteria</u>.

In this way, the present application describes a method of determining programs that have the preferred attributes and do not have the non-preferred attributes. These programs can then be set up for selection by the user for viewing or recording, or they can be set up for automatic recording.

In this example, by practicing the claimed method, only programs which (i) have Clint Eastwood as an actor and (ii) do not have Sandra Locke as an actor would be determined. Thus, programs such as "Dirty Harry," "High Plains Drifter," and "Escape From Alcatraz" would be determined, since each of these programs has Clint Eastwood as an actor and does not have Sandra Locke as an actor. Other programs, such as "The Outlaw Josey Wales" and "The Gauntlet," would not be determined because while each of these programs has Clint Eastwood as an actor, each also has Sandra Locke as an actor. The method is unconcerned that there are other actors in each of the determined programs (e.g., Patrick McGoohan); it only examines whether Clint Eastwood and Sandra Locke are actors in the program. This example highlights that the non-preferred program attributes are not merely logically-converse attributes of the preferred program attributes (i.e., the non-preferred attribute is not "Anyone except Clint Eastwood"). By using such complex logical statements to filter the program information database, the claimed invention provides more precise determinations of programs of interest to the user.

Applicant submits that the Examiner is misinterpreting Claim 1 in his citation of Boyer to reject Claim 1. Boyer does not teach, disclose, or suggest all the limitations of Claim 1. Thus, the Examiner has not provided a *prima facie* case of obviousness of Claim 1.

On page 4 of the December 5, 2003 Final Office Action, referring to the teachings of Boyer, the Examiner states that (emphasis added):

> as when movie category is selected, the user is presented with category program list page 860, as shown in fig. 14. The first movie program is Land of The Pharaohs. This movie has two attributes such as time & date sat 07 12:00PM and channel 21 AMC. These attributes are identified as preferred program attributes for the first movie program. However, these attributes are identified as non-preferred program attributes for the second movie program Erotic Princess (fig. 14, col. 11, lines 9-15).

First, Applicant submits that it is not accurate to describe identifying attributes as "preferred program attributes for the first movie program" or as "non-preferred program attributes for the second movie program." The preferred program attributes and the non-preferred program attributes recited in Applicant's claims are not associated with any particular movies or programs. They are obtained from user-defined criteria (see, e.g., the present specification at page 5, lines 6-12) and are compared to the attributes of the programs in the database to select programs, "the program attributes of each selected program having the preferred program attributes and not having the non-preferred program attributes" (see, e.g., the present specification at page 5, lines 13-19). For this reason, Applicant submits that Boyer does not teach, disclose, or suggest "identifying preferred program attributes and non-preferred program attributes" as recited by Claim 1.

Second, the Examiner appears to be interpreting the act of selecting a program from the list of Boyer as equivalent to identifying the attributes of the selected program as the "preferred program attributes," and to identifying the attributes of the programs that are not selected as the "non-preferred program attributes." However, Boyer does not disclose that this selection identifies either the preferred program attributes or the non-preferred attributes. In addition, the Examiner's interpretation effectively defines the non-preferred program attributes as "any attribute that is not an attribute of the selected program." Thus, the non-preferred program attributes would be the logically-converse attributes to the preferred program attributes, which, as discussed above, is a misinterpretation of the claim language of Claim 1. For this additional

reason, Applicant submits that Boyer does not teach, disclose, or suggest "identifying preferred program attributes and non-preferred program attributes" as recited by Claim 1.

Furthermore, Boyer merely discloses that upon selection of the movie category, a list of programs and their attributes (e.g., time, date, channel, and title) is presented to the user. Note that, as interpreted by the Examiner, this list disclosed by Boyer includes programs that have non-preferred program attributes. While the user is able to select one program from the list, Boyer does not disclose comparing the attributes of the listed programs to preferred and non-preferred program attributes defined by a user to determine a program of interest to the user. For this reason, Applicant submits that Boyer does not teach, disclose, or suggest "sorting through the first database using the user-defined criteria to select programs, the program attributes of each selected program having the preferred program attributes and not having the non-preferred program attributes" as recited by Claim 1.

Similarly, Applicant submits that the other prior art references of record do not teach, disclose, or suggest the limitations of Claim 1 not found in Boyer. With regard to U.S. Patent No. 6,172,674 B1 to Etheredge and U.S. Patent No. 6,481,011 B1 to Lemmons, Applicant incorporates in their entirety the remarks submitted by the Applicant in the "Response to May 22, 2003 Office Action" by reference herein.

U.S. Patent No. 5,758,259 to Lawler ("Lawler") discloses an automated selective programming guide which tracks the viewing history of a user to determine a "Personal Favorites Profile." As disclosed by Lawler at Table 2 and col. 7, line 62 - col. 8, line 5, the programming guide monitors programs received by the user and tabulates the number of these received programs having various criteria values. These tabulated counts are then correlated with prospective programs for viewing to determine which of the prospective programs is the preferred program (see, e.g., Lawler at col. 9, lines 12-18). Lawler does not teach, disclose, or suggest "obtaining user-defined criteria for identifying preferred program attributes and non-preferred program attributes," or "sorting through the first database using the user-defined criteria to select programs, the program attributes of each selected program having the preferred program attributes and not having the non-preferred program attributes," as recited by Claim 1.

For the foregoing reasons, Applicant submits that the prior art does not teach, disclose, or suggest the method defined by Claim 1. In particular, the prior art does not teach, disclose, or suggest using one or more non-preferred attributes as a basis for excluding programs from a list

of programs, as recited by Claim 1. Thus, Applicant submits that the Examiner has not provided a *prima facie* case of obviousness of Claim 1, so Claim 1 is patentably distinguished over the prior art. Applicant respectfully requests the Examiner to withdraw the rejection of Claim 1 and to pass Claim 1 to allowance.

<u>Claims 2 and 5-8</u>

Each of Claims 2 and 5-8 depends from Claim 1. Thus, each of Claims 2 and 5-8 includes all the limitations of Claim 1, as well as recites further limitations of particular utility. Therefore for the above-stated reasons with regard to Claim 1, Applicant submits that Claims 2 and 5-8 are patentably distinguished over the prior art. Applicant respectfully requests the Examiner to withdraw the rejection of Claims 2 and 5-8 and to pass these claims to allowance.

<u>Claim 14</u>

Applicant submits that Boyer does not teach, disclose, or suggest the method defined by Claim 14. As discussed herein, Applicant has amended Claim 14 to more clearly recite the claimed invention by reciting an audio/video apparatus for selecting programs from a plurality of programs, the apparatus comprising (emphasis added):

> a memory to receive and to store program information describing the plurality of programs through program attributes;
> a source of user-defined criteria, wherein <u>the user-defined criteria identify preferred program attributes and non-preferred program attributes</u>; and
> a preference module configured to sort through the program information <u>to select programs, the program attributes of each selected program having the preferred program attributes and not having the non-preferred program attributes</u>.

As discussed above in relation to Claim 1, Boyer does not teach, disclose, or suggest selecting a program having program attributes that include preferred program attributes and that do not have non-preferred program attributes. Thus, Applicant submits that Claim 14 is patentably distinguished over Boyer, and Applicant respectfully requests the Examiner to withdraw the rejection of Claim 14 and to pass Claim 14 to allowance.

<u>Claims 21 and 22</u>

Each of Claims 21 and 22 depends from Claim 14. Thus, each of Claims 21 and 22 includes all the limitations of Claim 14, as well as recites further limitations of particular utility. Therefore for the above-stated reasons with regard to Claim 14, Applicant submits that Claims 21 and 22 are patentably distinguished over the prior art. Applicant respectfully requests the

Examiner to withdraw the rejection of Claims 21 and 22 and to pass Claims 21 and 22 to allowance.

Response to Rejection of Claims 3, 4, 9-13, and 15-20 Under 35 U.S.C. § 103(a)

In the December 5, 2003 Final Office Action, the Examiner rejects Claims 3, 4, 9-13, and 15-20 under 35 U.S.C. § 103(a) as being unpatentable over Boyer in view of U.S. Patent No. 6,172,674 B1 to Etheredge.

<u>Claims 3, 4, and 9-13</u>

Each of Claims 3, 4, 10, and 13 depends from Claim 1, Claim 9 depends from Claim 8 which depends from Claim 1, and each of Claims 11 and 12 depends from Claim 10. Thus, each of Claims 3, 4, and 9-13 includes all the limitations of Claim 1, as well as recites further limitations of particular utility. Therefore for the above-stated reasons with regard to Claim 1, Applicant submits that Claims 3, 4, and 9-13 are patentably distinguished over the prior art. Applicant respectfully requests that the Examiner withdraw the rejection of Claims 3, 4, and 9-13 and to pass Claims 3, 4, and 9-13 to allowance.

<u>Claims 15-20</u>

Each of Claims 15 and 18 depends from Claim 14, each of Claims 16 and 17 depends from Claim 15, and each of Claims 19 and 20 depends from Claim 18. Thus, each of Claims 15-20 includes all the limitations of Claim 14, as well as recites further limitations of particular utility. Therefore for the above-stated reasons with regard to Claim 14, Applicant submits that Claims 15-20 are patentably distinguished over the prior art. Applicant respectfully requests the Examiner to withdraw the rejection of Claims 15-20 and to pass Claims 15-20 to allowance.

Rejection of Claims 23 and 24 Under 35 U.S.C. § 103(a)

In the December 5, 2003 Final Office Action, the Examiner rejects Claims 23 and 24 under 35 U.S.C. § 103(a) as being unpatentable over Boyer in view of Lawler. As discussed herein, Applicant has cancelled Claim 24 without prejudice. Applicant submits that Boyer in view of Lawler does not teach, disclose, or suggest all the limitations of Claim 23.

As discussed above with regard to Claim 1, neither Boyer nor Lawler discloses "obtaining user-defined criteria for identifying preferred program attributes and non-preferred program attributes." Furthermore, neither Boyer nor Lawler discloses "comparing the program attributes of a program ... to the preferred program attributes," "comparing the program attributes of the program ... to the non-preferred program attributes," or "selecting the program of the plurality of

programs if the program attributes of the program include the preferred program attributes and do not include the non-preferred program attributes."

As discussed above in regard to Claim 1, Lawler discloses a system which monitors the user's viewing history to tabulate the number of received programs having particular tracked attributes. These tabulated counts are then correlated with prospective programs for viewing to determine which of the prospective programs is the preferred program (see, e.g., Lawler at col. 9, lines 12-18). While Lawler identifies one or more preferred program attributes (those having the higher counts), Lawler does not identify non-preferred program attributes. Thus, Lawler does not teach, disclose, or suggest "obtaining user-defined criteria for identifying preferred program attributes and non-preferred program attributes," as recited by Claim 23. Furthermore, Lawler does not teach, disclose, or suggest "comparing the program attributes of a program ... to the preferred program attributes," "comparing the program attributes of the program ... to the non-preferred program attributes," or "selecting the program ... if the program attributes of the program include the preferred program attributes and do not include the non-preferred program attributes," as recited by Claim 23.

In view of the foregoing discussion, Applicant submits that Claim 23 is patentably distinguished over the prior art. Applicant respectfully requests the Examiner to withdraw the rejection of Claim 23 and to pass this claim to allowance.

Comments on Amended Claims 1-3, 6, 10-20, and 22-23

As discussed herein, Applicant has amended Claims 1-3, 6, 10-20, and 22-23. Claims 2-3, 10-13, and 15-20 have been amended to provide correct antecedent basis by using the terms "user-defined criteria" and "selected programs." In addition, Claims 1, 6, 14, 22, and 23 have been amended to more clearly recite Applicant's invention. Applicant submits that these amendments do not introduce new issues and Applicant respectfully requests entry of these amendments.

Comments on New Claim 25

Applicant has added new Claim 25 which is supported by the present application. Applicant submits that new Claim 25 is patentably distinguished over the prior art, and Applicant respectfully requests that the Examiner pass Claim 25 to allowance.

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Summary

For the foregoing reasons, Applicant submits that Claims 1-25 are in condition for allowance, and Applicant respectfully requests allowance of Claims 1-25.

Respectfully submitted,

Dated: _____3/3/04_____   By: _____

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